

**\*APPLICANT’S DRAFT ORDER\***

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment**

**Application No. 19581 of Latin American Montessori Bilingual Public Charter School**, pursuant to 11-U DCMR § 205.1(a) and 11-X DCMR § 901 for a special exception to allow the establishment of a public charter school under Subtitle U § 202.1(m) and the colocation of a public charter school under Subtitle U § 202.1(n) in the R-16 Zone District at premises 5000 14<sup>th</sup> Street, NW (Square 2711, Lot 802).

**HEARING DATES:** November 15, 2017; December 20, 2017; February 14, 2018  
**DECISION DATES:** January 17, 2018; January 24, 2018; February 21, 2018

**DECISION AND ORDER**

This application was submitted on June 29, 2017 by the Latin American Montessori Bilingual Public Charter School (“Applicant” or “LAMB” or “School”), the Building Hope Parkside Foundation (“Building Hope”), and the Kingsbury Center (“Kingsbury”).<sup>1</sup> The Applicant is the intended occupant and eventual owner of the property that is the subject of this application. The application requests special exception approval in order to allow the establishment of a public charter school at the subject property. Following the public hearings, the Board of Zoning Adjustment (“BZA” or “Board”) voted to approve the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Public Hearing

By memorandum dated August 22, 2017, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 4; Advisory Neighborhood Commission (“ANC”) 4C, the ANC for the area within which the subject property is located; and the single-member district (“SMD”) representative for ANC 4C02. Pursuant to 11-Y DCMR § 402.1, on August 22, 2017, the Office of Zoning mailed notice of the hearing to the Applicant, ANC 4C, and the owners of all property within 200 feet of the subject property.<sup>2</sup> Notice of the hearing was published in the *D.C. Register* on \_\_\_\_\_. The Applicant confirmed by affidavit that it posted notice of the public hearing on the subject property on October 31, 2017.

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<sup>1</sup> The Building Hope Parkside Foundation is the contract purchaser of the subject property. The Kingsbury Center is the present owner of the subject property, but the Board removed the Kingsbury Center from this application and directed it to file a separate application pertaining to its own use and conditions. Accordingly, the Applicant filed a revised fee calculator and statement in support of the application, as reflected in Exhibits 14 and 15.

<sup>2</sup> Notice was sent for a hearing date originally scheduled for October 4, 2017. However, the hearing date was rescheduled to November 15, 2017, at the Applicant’s request, in order to allow the Applicant to continue community dialogue and to present at the October meeting of ANC 4C.

Public Hearing

The Board held a public hearing on the application on November 15, 2017 and limited scope public hearings on December 20, 2017 and February 14, 2018. At the end of the November 15 hearing, the Board closed the record except for a submission from the Applicant and responses from the parties, an additional submission from ANC 4C, and additional information from the Office of Planning. At the end of the December 20 hearing, the Board closed the record except for a revised list of proposed conditions from the Applicant and responses from the parties. The Board scheduled a decision for January 17, 2018, at which it deliberated, but the Board continued its decision to January 24, 2018. On January 24, 2018, CNDI-LA filed a motion to reopen a closed case, which the Board granted. The Board scheduled a limited scope public hearing for February 14, 2018, after which the Board closed the record. The Board scheduled a decision for February 21, 2018, at which it deliberated and voted to approve the application.

Party Status

The Applicant and ANC 4C were automatically parties in this proceeding. On October 31, 2017, the Committee of Neighbors Directly Impacted by LAMB Application ("CNDI-LA"), a group of neighborhood residents, filed an application for party status in opposition. The Board granted CNDI-LA's request for party status.

Applicant's Case

The Applicant provided testimony and evidence from Diane Cottman, executive director of LAMB; Jerry Zayets, a representative of Building Hope; and Daniel Van Pelt, principal and vice president at Gorove/Slade Associates and accepted by the Board as an expert in traffic and transportation engineering. With the application, the Applicant proposed the establishment of a public charter school at the subject site to be shared with Kingsbury until Kingsbury departs, after which LAMB will be the sole occupant. The proposed public charter school will have a maximum of 600 students and 110 faculty and staff. The Applicant described the subject property and neighborhood context, explained LAMB's background and proposed use of the subject property, described the transportation review and traffic mitigation measures and commitments, explained how the establishment and operation of LAMB would not adversely affect the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions, and demonstrated that granting the special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property. (Exhibits ("Ex.") 14, 31A, 36-36B, 114, 121, 122, & 163-163B.) At the November 15, December 20, and February 14 public hearings, the Applicant's team presented testimony in support of the requested special exception. (11/15/2017 Transcript ("Tr.") at 12-35, 99-107; 12/20/2017 Tr. at 52-63, 93, 98-99.) The Applicant demonstrated that the application satisfied the applicable requirements of the Zoning Regulations under Subtitle U § 205.2 and Subtitle X § 901.2.

Following the November 15 public hearing, at the Board's request, the Applicant filed additional information relating to the performance monitoring plan, anticipated mode splits, LAMB's student population growth plan, the School's good neighbor policy, the LAMB/community committee; financing challenges; and revised proposed conditions. The Applicant filed this information on December 6, 2017. (Ex. 121.) Following the December 20 public hearing, at the Board's request, the Applicant filed further revised proposed conditions. The Applicant's final proposed

conditions included a limit of 310 students until after Kingsbury no longer also occupies the subject site. The Applicant's final proposed conditions also included an "alternate condition" that allowed for approval for 600 students without returning to the BZA but required the Applicant to demonstrate to the Zoning Administrator that it was in compliance with all other applicable conditions and the performance monitoring plan before the certificate of occupancy to increase its student count to 600 may be granted. The Applicant filed its final proposed 35 conditions of approval on January 9, 2018. (Ex. 163A.)

#### OP Report

By reports dated November 3, 2017 and December 12, 2017, and through testimony at the public hearing, OP recommended approval of the application, with three conditions. (Ex. 46, 128; 11/15 Tr. at 80-82; 12/20 Tr. at 71-72.) The Applicant agreed to two of the conditions. OP found that the application satisfied all of the criteria pursuant to Subtitle U § 205.2 and Subtitle X § 901.2 for the requested special exception. In particular, OP found that the proposed charter school will not adversely affect neighboring properties due to traffic, parking, noise, design, or lighting. With respect to noise from the School, OP determined that it would not be adverse to neighboring properties: "For the majority of the day, the students would be indoors. The building is centrally located on the property and surrounded by parking lots so it is set back from the property line. Most of the adjacent properties are churches which operates at different times. The outdoor recreation would be during normal school hours and there would be minimal night activities since it's an elementary school." (Ex. 46). With respect to design, OP determined that it would not be adverse to neighboring properties because the building will remain unchanged when the public charter school begins occupation, except for the proposed gymnasium, for which OP recommended that the Applicant return to the BZA. Also, OP determined that the provided parking will satisfy the zoning requirement and will accommodate the anticipated demand for both employees and visitors, both when LAMB and Kingsbury are both occupants and when LAMB is the sole occupant. OP found that the location of the parking spaces will not have an objectionable impact on neighboring properties since "most of the parking spaces are set back from the property line, and are not directly adjacent to any residential properties, and therefore should not have an objectionable effect on neighboring properties." (Ex. 46). Furthermore, OP determined that the amount of parking and queuing space on the subject property will accommodate anticipated drop-off and pick-up demand without adversely affecting traffic and parking conditions on nearby streets. OP concluded that the proposed public charter school will be in harmony with the purpose and intent of the R-16 zone and supported the conditions proposed by LAMB and DDOT. At the November 15 public hearing, OP changed its recommendation for its third condition and stated that it supported an alternate condition proposed by the Applicant that would not require the Applicant to return to the BZA to increase its student count at the subject property but would provide adequate monitoring and protections for the community. (11/15 Tr. at 81-82). In its supplemental report, OP provided additional information about the mechanics and enforceability of this alternate condition and reiterated its support for it. (Ex. 128).

#### DDOT Report

By report dated November 1, 2017, DDOT stated that it had no objection to the application, with conditions. (Ex. 45). The Applicant agreed to all of DDOT's conditions. DDOT found that the Applicant used sound methodology in the Applicant's comprehensive transportation review ("CTR") and supplemental CTR. DDOT stated that it concurs with the Applicant's site traffic

distribution assumptions that approximately 85% of vehicles dropping-off or picking up students will use 14<sup>th</sup> Street and only 15% will use Piney Branch Road. DDOT further found that the Applicant's proposed transportation demand management plan along with a performance monitoring plan and pedestrian network improvements will minimize the number of vehicles traveling to/from the site and limit the impact on nearby intersections. DDOT also found that the Applicant's proposed pick-up and drop-off operations would be adequate to serve 600 students and would prevent queuing onto adjacent streets. DDOT stated that it coordinated with the Applicant in its study area of 16 intersections that would be affected by the application and noted that it expects minimal to no delay at the intersections outside the study area. The Board is convinced by the DDOT report because of its comprehensive analysis and because of its expertise in assessing transportation impacts of proposed uses and developments.

#### ANC Report

At a regularly-scheduled and duly-noticed public meeting held on November 8, 2017 with a quorum present, ANC 4C voted 5-2-0 to adopt a resolution in support of the application, with the conditions proposed by OP and DDOT. (Ex. 71.) The ANC found that, with the adoption of the proposed conditions, LAMB will be a positive addition to the community, and potential adverse impacts will be mitigated. The ANC also stated that it believes, with the adoption of the proposed transportation demand management plan, performance monitoring plan, on-site parking, and ample on-site queuing space, that the proposed public charter school will have minimal adverse impacts on traffic conditions in the neighborhood. The ANC also stated its agreement with the Applicant's proposed conditions.

At a regularly-scheduled and duly-noticed public meeting held December 13, 2017 with a quorum present, ANC 4C voted 6-0-1 to adopt a resolution in continued support of the application. (Ex. 133.) The ANC resolution specifically supported the Applicant's and OP's proposed "alternate condition," as stated in the resolution, that allows approval of 600 students without LAMB having to return to the BZA for approval, provided that LAMB satisfies the applicable criteria in the condition for a certificate of occupancy for its increased enrollment once Kingsbury vacates the building. ANC 4C02 Commissioner Maria Barry, the single member district representative for the subject property, testified at the public hearing on behalf of the ANC. She stated that the ANC heard numerous comments about the application from both supporters and opponents, including CNDI-LA, over several months and that the ANC was satisfied that the conditions proposed by the Applicant, including the "alternate condition," would satisfy the concerns that the ANC heard. (12/20 Tr. at 77-79.)

#### Persons in support

The Board heard testimony and received many letters from persons in support of the application. Three people testified in support of the application, one of whom lives approximately three blocks from the subject property. Testimony in support included: (1) acknowledgement of the school's commitment to the community and working with stakeholders; (2) lack of concern about sewage backups; (3) belief that the traffic to/from the school can be adequately accommodated without adverse impact on the neighborhood; (4) acknowledgement of extensive community involvement in the BZA process; (5) support for the conditions and performance monitoring plan; (6) noting that increased traffic is not a concern because most of the trips are already occurring; (7) claim that the proposed location of the school will incentivize walking and biking; and (8) having all of

LAMB's operations consolidated at one site is a benefit to the school and the overall city. (11/15 Tr. at 88-93.)

The Board also received more than 60 letters in support of the application. The letters – most from ANC 4C residents and SMD 4C02 residents – expressed support for the application regarding the following: (1) the advantages of the proposed location to increase efficiencies for the school; (2) the ample space and parking on the site and in the building to adequately accommodate all 600 students; (3) LAMB's commitment to working with the community and being a good neighbor; (5) the benefit to the overall District's school children by consolidating at this site by providing access for more children to LAMB; (6) the site has adequate on-site parking and green space to accommodate the students; (7) the importance of consolidating LAMB in one location; (8) the new location will incentivize biking and walking mean fewer automobile trips than anticipated; (9) the majority of neighborhood residents support the establishment of the School; (10) the School will increase property values; (11) concerns about adverse traffic impacts will be unrealized; (12) the benefit that will result to West Elementary School; (13) the extensive community outreach and engagement from LAMB; (14) the presence of LAMB will help retain the diversity in the neighborhood; (15) the subject property is well suited to accommodate a public charter school and is the best use of the property; (16) the nearby transportation infrastructure will be able to accommodate the School's students, parents, and staff; and (17) the public charter school will not create adverse noise, lighting, infrastructure, or environmental impacts. (Ex. 50, 53, 54, 59, 61, 63, 64, 79, 81, 82, 85, 89, 98, 100, 106, 110, 123, 125, 136, 138, 143, 146, 147, 150, 152, 153, 156, 159.) In addition, writing on their own behalf, the ANC SMD representatives from 4C01, 4C02, and 4C06 submitted letters in support of the application. (Ex. 70, 72, 90). Finally, Ward 4 Councilmember Brandon Todd filed a letter in support of the application. (Ex. 104.)

Party in opposition.

The CNDI-LA party testified in opposition at the public hearing and filed multiple documents into the record. Their testimony at the public hearing included the following: (1) concerns about approving 600 students for the site as more than the current number of students at the site, so impacts will be greater than previously experienced; (2) support for approval of 310 students with a requirement that the Applicant return to the BZA to increase the student count to 600; (3) concern that approval of the application will be inconsistent with the requirements and purposes of the R-16 zone, including improved public review; (4) adverse traffic impacts resulting from an increase in trips to/from the site; (5) concerns about school-related traffic routing on nearby streets and the use of Piney Branch Road; (6) scope of the Applicant's CTR was inadequate and overall study was deficient; (7) adverse impacts to the residential character of the neighborhood; (8) negative effect on property values; (9) concern about the ability to assess the impacts of the School after it has been approved including effectiveness of transportation demand management measures; (10) concerns about adverse environmental impacts including sewer backups; (11) concerns about adverse lighting impacts; (12) concerns about LAMB's compliance with conditions; (13) claims that CNDI-LA was given inadequate notice of the application; and (14) the desire for the establishment of metrics and verification methods of compliance for LAMB; and (15) concern about the membership of the School/community committee with respect to the School parent representative. (11/15 Tr. at 53-74; 12/20 Tr. at 88.)

The CNDI-LA party also filed documents in the record that included the following claims and issues: (1) adverse impacts on neighborhood parking because of the public charter school; (2) adverse noise impacts from the school itself and from additional traffic to/from the school; (3) concerns about inadequate screening of on-site parking and a green buffer around the perimeter of the subject property; (4) the performance monitoring plan data collection will be too infrequent, does not adequately capture enough information, should not be self-certified by the Applicant, lacks sound methodology, and does not involve community input; (5) skepticism about anticipated mode splits for the school; (6) lack of enforcement against staff, families, and students who do not abide by the School's conditions and policies; (7) objection to the Applicant's claim of financing challenges from a return to the BZA and that such claim is incorrect and should not be considered; (8) desire for Kingsbury to be included in some of the conditions of approval for LAMB because of cumulative effects of both schools ; (9) concern about additional adverse impacts from large events beyond the normal school operations; (10) objection to the Board's acceptance of the ANC's resolutions and giving the ANC "great weight"; (11) claim of Applicant's failure to adequately mitigate adverse traffic impacts identified in the CTR, including on nearby intersections; and (12) concerns about the school's proposed "good neighbor policy" and CNDI-LA's equal participation in the School/community committee. (Ex. 111, 112, 113, 116, 118, 130, 131, 132, 154, 157, 158, 164, 165, 169). Most of CNDI-LA's objection to the application regarded the Applicant's proposed "alternative condition," based on CNDI-LA's concerns about limited community input and lack of oversight of the School as well as the enforceability of the conditions.

#### Persons in opposition

The Board heard testimony and received letters from persons in opposition to the application. The testimony included: (1) concern about the application's consistency with the R-16 zone; (2) concern about the proposed number of students; (3) claims of lack of notice about the application; (4) claims of adverse traffic and congestion impacts on neighborhood streets; and (5) concern about adverse impacts on West Elementary. (12/20 Tr. at 108-114.)

The letters – some of which were from members of CNDI-LA – expressed opposition to the application regarding the following: (1) concern about the application's consistency with the R-16 zone; (2) claims of overburdening of neighborhood streets and facilities with additional traffic; (3) concern about too many students; (4) concerns about Kingsbury's compliance with its own conditions; (5) concerns about lacking accommodation of residents' concerns; (6) concerns about noise and no buffering; (7) concerns about large non-school events on the site; (8) claims of inadequate notice about the application; (9) desire for the School to be obligated to receive BZA approval to expand beyond 310 students to assess its impacts; (10) concerns about traffic on Piney Branch Road; (11) concerns about sufficiency of on-site parking and spill-over queuing; (12) concerns about the efficacy of transportation mitigation measures; (13) claims of inadequacy of the scope of the CTR; and (14) concerns about the impacts on the neighborhood quality of life. (Ex. 47, 49, 66, 67, 68, 74, 83, 84, 86, 87, 97, 103, 107.)

#### **FINDINGS OF FACT**

1. The subject property is located at 5000 14<sup>th</sup> Street NW (Square 2711, Lot 802) (the "Property").

2. The Property is located in the R-16 Zone District. Pursuant to Subtitle U § 205.1(a), the R-16 zone requires special exception approval for all non-residential uses otherwise permitted as a matter-of-right in an R zone, including a public charter school.
3. The Property is bound to the north by Gallatin Street NW, to the south by a public alley, to the east by 14<sup>th</sup> Street NW, and to the west by Piney Branch Road NW. The Property contains approximately four (4) acres of land area. (Ex. 4, 14.)
4. The Property is improved with a three-story plus cellar building that was originally constructed circa 1907 as a retirement home but has been occupied since 2000 by a private school, the Kingsbury Center.<sup>3</sup> (Ex. 14.)
5. A large outdoor recreation area/field is located at the north end of the Property, and a smaller outdoor recreation area is located immediately southwest of the building. The Property is also landscaped. Surface parking spaces and driveways are located around the perimeter of the building within boundaries of the Property. (Ex. 7, 14.)
6. The Property contains 107 parking spaces for faculty, staff, and visitors. The multiple driveways that encircle the building accommodate on-site circulation of automobiles and trucks. (Ex. 7, 14, 46.)
7. The main entrance to the building is located on the east side, but secondary entrances are located on the north, south, and west sides as well. Vehicular access to the Property is via the entrance at the northeast corner of the Property. Vehicular exits are located at the northwest and southeast corners of the Property. The primary pedestrian-only entrance to the Property is located at the center of the east side, and a secondary pedestrian entrance is located at the center west side. (Ex. 7, 14, 46.)
8. The properties surrounding the Property are characterized primarily by residential uses and some institutional uses. Single-family houses are located primarily to the south and west of the Property, but they are located to the north and southeast as well. Religious institutions are located immediately to the north and southwest of the Property. West Elementary School is located immediately to the east across 14<sup>th</sup> Street NW. There are no residential properties contiguous or adjacent to the Property. (Ex. 7, 14, 46.)

#### Proposed Use

9. The Applicant proposes to establish a public charter school at the Property and to colocate with the existing Kingsbury Center in the building. Kingsbury will eventually depart the Property, but the exact date is unknown. The Applicant also proposes to eventually construct a gymnasium on the west side of the building, but, otherwise, the exterior of the building will not change.

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<sup>3</sup> Per BZA Order Nos. 16569 and 16569A, the Kingsbury Center is permitted to occupy the Property as a private school.

10. The Applicant will not change the number or location of the existing 107 parking spaces or the number or location of the existing driveways and entry/exit points on the Property. Some of the existing parking spaces and driveways are within the required side yard to the south and between the building and 14<sup>th</sup> Street. However, this is an existing situation approved under BZA Order No. 16569 for Kingsbury. Furthermore, the Applicant will install evergreen trees around the perimeter of the Property to buffer the nearby residential properties from the on-site parking and noise. (Ex. 7, 14, 46, 163A.)
11. LAMB will have a maximum student population of 600 and a maximum faculty and staff population of 110.
12. During the time when both LAMB and Kingsbury are operating in the building, LAMB will have a maximum of 310 students and a maximum of 36 faculty and staff. LAMB will gradually expand its student population to 600, via a steady growth plan of adding 30-50 students per year, after Kingsbury departs the Property.
13. During the time when both LAMB and Kingsbury are operating in the building, there will be a cumulative total of 485 students (310 LAMB students and 175 Kingsbury students).
14. CNDI-LA and many opponents agreed with an initial approval of 310 LAMB students at the Property.

Special Exception Relief

*Traffic and Parking*

15. The Applicant's transportation expert prepared a comprehensive transportation and parking study – the CTR – that assessed the potential impacts of the School both when it is at the Property with Kingsbury and when it is the sole occupant with 600 students. The CTR's analysis included existing conditions in the neighborhood, including West Elementary School. The CTR evaluated traffic and parking conditions in the neighborhood as a result of the School, the number of trips expected to be generated by the School, an on-site circulation plan, expected on-site parking demand, queuing space demand, and proposed mitigation measures that included the Applicant's proposed transportation demand management ("TDM") plan. The CTR concluded that the proposed public charter school will not have a detrimental impact to the surrounding transportation network, assuming that all proposed mitigation measures are implemented. (11/15 Tr. at 18-30; Ex. 31A, 36A.)
16. The expected maximum demand for on-site parking from faculty, staff, and visitors is 104 spaces, which is less than the provided 107 on-site spaces. This demand includes student drop-off and pick-up times for both LAMB and Kingsbury as well as for when LAMB has 600 students. Therefore, there will not be on-street parking demand from the School. The provided number of parking spaces also exceeds the requirement in Subtitle C, Chapter 7 of the Zoning Regulations. (11/15 Tr. at 21-22; Ex. 7; 46.)



17. The Property has enough on-site parking and maneuvering space to accommodate the expected limited number of trucks to the Property without adversely impacting parking or on-street conditions in the nearby neighborhood. (11/15 Tr. at 22).
18. The School will not generate material bus traffic. Buses will not regularly travel to and from the Property to transport students. Buses will be used by the School only in limited cases, such as for field trips and for special needs students. (11/15 Tr. at 102.)
19. The School's circulation plan orients automobile traffic to 14<sup>th</sup> Street, with all traffic entering from 14<sup>th</sup> Street and most exiting onto 14<sup>th</sup> Street, with some exiting onto Piney Branch Road. Piney Branch Road will be available only to exiting traffic going north and is expected to be much more limited than exits onto 14<sup>th</sup> Street. DDOT concurred with the Applicant's circulation plan that included some trips exiting onto Piney Branch Road and going north. The School will prepare a policy manual for all parents that will indicate the appropriate driving routes to and from the Property, and it will install a sign indicating that Piney Branch Road is for exit only. Further, the School will have traffic monitors at entry and exit points to ensure compliance with the policy manual regarding routing and other transportation matters. (11/15 Tr. at 23; Ex. 31A; 163A.)
20. The on-site driveways have ample space to accommodate the expected queueing space demand so that all drop-offs and pick-ups will be accommodated on the Property without any use of or impact on public streets or alleys. This is an uncommon condition for schools in the District. (11/15 Tr. at 23-25; Ex. 31A.)
21. The scope of the CTR was reviewed and determined with DDOT after an extensive process. DDOT agreed that the scope of the CTR was sufficient to evaluate potential impacts of the School and that the analysis and methodology in the CTR were consistent with typical DDOT and industry standards. Accordingly, the CTR is an appropriate means to adequately evaluate transportation impacts of the School. (11/15 Tr. at 26-27; Ex. 45.)
22. The CTR studied 16 area intersections to determine the traffic impacts of the School. DDOT and the Applicant's transportation expert determined that the studied intersections were sufficient to evaluate the School's potential traffic impacts. Only four of the studied intersections are likely to be adversely impacted by the School, without mitigation. DDOT determined that the 16 studied intersections are the most likely to see potential impacts from the School, so while other intersections may be affected, they are not likely to experience adverse impacts directly attributable to the School. Accordingly, it was analytically appropriate to study these 16 intersections and exclude others. Further, while the CTR concluded that trips to and from the Property will increase with the School, many of the trips estimated in the CTR likely are already on the street network because of parents driving to the School's present facilities. (11/15 Tr. at 21, 26; Ex. 45.)
23. The mode splits for trips to and from the Property are expected to be more oriented to non-automobile modes than is currently the case for the School. Based on the locations of LAMB families, adequacy of non-automobile accommodations between students' homes and the

Property, and the number of families with multiple children at LAMB, the Applicant projected that many of the trips are likely to shift to walking and biking. (Ex. 121; 12/20 Tr. at 58.)

24. The CTR concluded that the School's implementation of a robust TDM plan and adoption of other measures recommended by DDOT are capable of adequately mitigating the traffic impacts from the School on the surrounding transportation network. The Applicant's transportation expert determined – and DDOT concurred – that, with the Applicant's proposed TDM plan, its proposed performance monitoring plan ("PMP"), and construction of nearby transportation infrastructure improvements, the School will not have a detrimental impact on the affected nearby streets and intersections. DDOT recommended infrastructure improvements for pedestrian facilities instead of traffic signal adjustments, as the Applicant proposed, to best mitigate traffic impacts by providing a better pedestrian network to encourage more walking to and from the Property. Accordingly, in addition to its proposed robust TDM plan, the Applicant agreed to an enhanced version of the PMP and to construct all of the pedestrian infrastructure improvements proposed by DDOT. (Ex. 31A, 36A, 45; 11/15 Tr. at 28-30.)
25. Existing circumstances in the neighborhood, unrelated to the establishment of the School, already determine many of the traffic conditions. Such circumstances have been studied and continue to be studied by DDOT and include cut-through commuter traffic, traffic related to West Education Campus, Beach Drive construction traffic diversions, traffic speed, and the recent change of Emerson Street to one-way. The traffic conditions resulting from these circumstances affect the neighborhood regardless of the School. (11/15 Tr. at 18-19; Ex. 31A.)
26. The Applicant's proposed PMP will provide the mechanism for capturing transportation metrics to minimize traffic impacts from the School and to achieve multi-modal goals. The PMP establishes a vehicular trip generation threshold, defines evaluation criteria and methodology, and establishes potential remediating measures. PMPs are used successfully at other schools in the District. The Applicant will collect data for the PMP on a yearly basis on a typical school day. This method of data collection is consistent with industry standards, all of the traffic studies performed in the District, and other PMPs in the District; it is also deemed by DDOT to be appropriate for accurately assessing compliance with the PMP. DDOT agreed to the Applicant's proposed elements and methodology for the PMP. While the Applicant will collect the data for the PMP, DDOT will evaluate the PMP to determine whether the Applicant is in compliance with its metrics. This practice is consistent with other traffic studies and PMPs in the District. As proposed, the Applicant's PMP is expected to result in at least seven years of reporting and will adequately mitigate adverse traffic impacts on the neighborhood. (12/20 Tr. at 55-57; Ex. 121.)

*Noise*

27. The Applicant will implement noise mitigation measures. The Applicant will install acoustic blankets on HVAC units facing Piney Branch Road to mitigate any such noise from the HVAC units. In addition, the Applicant will plant evergreen trees around the perimeter of the Property

to buffer sound from the School, including any noise generated by children playing outside or other School-related outdoor activities. (11/15 Tr. at 101; Ex. 163A).

28. The Applicant will implement multiple traffic mitigation measures, as described above, which will have the effect of mitigating noise too. Because these traffic mitigation measures will result in no adverse traffic impact on the surrounding streets, the traffic will not generate adverse noise impacts from such traffic. Further, as described above in the Applicant's traffic routing plan, because most traffic to and from the Property will use 14<sup>th</sup> Street, the noise from such traffic will not affect the residences more than 300 feet away on the other side of the Property along Piney Branch Road. Further, the planned evergreen trees around the perimeter of the Property will buffer noise from the School. (Ex. 4, 7, 31A, 163A.)
29. As the Office of Planning concluded, the School is not expected to generate excessive noise to unduly affect the adjacent properties. For the majority of the day, the students will be indoors. The building is centrally located on the property and surrounded by parking lots so it is set back from the property line to create a noise buffer. Most of the adjacent properties are churches that operate at different times. The outdoor recreation would be during normal school hours, and there would be minimal night activities since it's an elementary school. When the gymnasium is built, there would be less outdoor play, further reducing potential noise from the facility. (Ex. 46.)

#### *Lighting*

30. The Applicant will maintain the existing lighting plan for the exterior of the building and the parking lot, and it will not install any additional outdoor lighting unless required by law or regulation. All parking lot lighting will be focused downward to minimize spillover. (11/15 Tr. at 101-102; Ex. 163A.)
31. Before changing any outdoor lighting, the Applicant will review such changes with the community to ensure that no adverse impacts will result. (Ex. 163A.)

#### *Design*

32. As proposed in the application, the Applicant will not alter the exterior of the building, so the School will occupy the building with its current exterior design. (Ex. 7, 46.)
33. For the proposed gymnasium addition, the Applicant will return to the BZA for review and approval to ensure that the gymnasium does not have any adverse impacts on the surrounding properties. (Ex. 163A.)

#### *Other Conditions*

34. Sewer backups occurring in the neighborhood are the result of an existing condition of the infrastructure, independent of the Property and its use. This is a problem that DC Water is addressing. The sewer in the vicinity of the Property is a combined sewer, so sometimes

during heavy rainstorms there is an oversupply of water in the sewer system that creates backups regardless of the Property or its use. (11/15 Tr. 35.)

35. The establishment of the School is not expected to adversely affect neighborhood property values. As letters in the record demonstrate, LAMB is one of the most well-regarded public charter schools in the District, is highly sought after by many parents, has broad community support, many current parents in Ward 4 positively anticipate a closer location, and some supporters think the presence of LAMB will raise property values. An unsupported assertion that the School will adversely affect property values is without warrant, and the mere claim does not make it a materially contested issue, when considered in light of the School's support and many attributes.
36. The establishment of the School at the Property will not remove an existing residential use or otherwise establish a non-residential use that did not already exist on the Property. The density of the School, when calculated on the basis of land area per student, is less than other public schools in Ward 4. In addition, unlike many public schools in Ward 4, all parking, drop-offs/pick-ups, and queueing for the School will occur on-site. (11/15 Tr. at 16.)

*Conditions of Approval to Mitigate Impacts*

37. The Applicant proposed 35 conditions of approval that reflect input and endorsement from the ANC, OP, DDOT, and other community residents. The Applicant's proposed conditions also reflect extensive input from and negotiation with CNDI-LA. The proposed conditions address traffic, parking, lighting, noise, design, environmental concerns, construction, community engagement, impacts on/consultation with West Elementary School, non-residential uses in the neighborhood, and number of students in order to effectively mitigate potential adverse impacts from the School on the neighborhood. In addition, the proposed PMP includes metrics and verification methods with which the School must comply. The Applicant agreed to further modify the conditions after final submission to reflect CNDI-LA's concerns about notice of an application for a certificate of occupancy and the composition of the School/community committee. (Ex. 163, 163A.)
38. CNDI-LA agreed with 27 of the Applicant's 35 proposed conditions. CNDI-LA proposed changes to only eight of the Applicant's proposed conditions. For proposed condition nos. 2, 3, 7, 9, and 10, CNDI-LA proposed adding Kingsbury as also being bound by those conditions. For proposed condition no. 2, CNDI-LA proposed restricting the use of Piney Branch Road to only faculty and staff. For proposed condition nos. 10, 28, and 30, CNDI-LA proposed requiring the School to receive BZA approval to increase its student count to 600 after Kingsbury departs the Property. For proposed condition no. 12, CNDI-LA proposed that the parent representative on the LAMB/Community Committee be a resident of ANC SMD 4C02, rather than anywhere in ANC 4C. (12/20 Tr. at 69, 90; Ex. 164.)
39. Instead of requiring BZA approval, condition no. 30 of the Applicant's proposed conditions requires that the Applicant be in compliance with the PMP and all other relevant conditions of approval before the Zoning Administrator may issue a certificate of occupancy to allow the School to increase its student count from 310 to 600 after Kingsbury has departed the Property

(the "Alternate Condition"). DDOT will verify the School's compliance with the PMP, and the Applicant must demonstrate to the Zoning Administrator ("ZA") that it has complied with all other conditions of approval. If the ZA finds that the School is not in compliance with all applicable conditions, then the School must receive BZA approval to increase its student count to 600. (Ex. 163, 163A.)

40. The Alternate Condition is an enforceable check on the School's growth by requiring a demonstration by the School that it is in compliance with all of the other conditions of approval that will mitigate adverse impacts on the neighborhood. Without such demonstrated compliance, the School will be unable to receive a certificate of occupancy to attain a student count of 600, unless the BZA approves it. By requiring that the School provide CNDI-LA and the ANC with its information to demonstrate compliance at least 90 days ahead of time, the Alternate Condition will ensure that the community has the opportunity to assess and provide input to the ZA about the School's compliance with the conditions. Therefore, the School's forced demonstrated compliance with the conditions of approval will be the mechanism to assess the effectiveness of the conditions and to provide assurance to the community that the School will not have unmitigated adverse impacts even after the School has been approved by the BZA. (Ex. 163, 163A; 12/20 Tr. at 94-95; 2/14 Tr. at 16-18.)
41. The Alternate Condition as well all other proposed conditions are enforceable and provide oversight of the School's operations. The ZA is charged with enforcing conditions in BZA Orders, and he may enforce any conditions regardless of the Alternate Condition. The ZA testified, and OP agreed, that the compliance mechanisms within the Alternate Condition allow for the ZA to effectively enforce this condition (as well as all of the others) and to prevent expansion of the School's student count if the School is not in compliance with the conditions. The ZA also testified how the other proposed conditions are enforceable by his office. (11/15 Tr. at 81, 95-97; Ex. 128).
42. The LAMB/Community Committee ("LCC"), as stated in the Applicant's proposed condition nos. 12 and 13, and as the School agreed to amend them, will be the check on the School's "Good Neighbor Policy" and the mechanism for the community, in general, and CNDI-LA, in particular, to engage with the School and to address any issues with or concerns about the School. The composition of the nine-member LCC includes representatives from the School, a LAMB parent residing in ANC SMD 4C02, the elected ANC SMD 4C02 representative, two CNDI-LA representatives, and two representatives from West Elementary School. Accordingly, the LCC includes guaranteed participation by CNDI-LA and limits LAMB parent participation to that which resides in the immediately affected neighborhood. (Ex. 163A; 12/20 Tr. at 59-60; 2/14 Tr. at 14.)
43. The Applicant's proposed condition nos. 14-17, with which CNDI-LA is in agreement, will regulate "large events," as defined therein and includes potential non-School related events, so that such occasional large events do not cause adverse impacts on the neighborhood beyond the normal operations of the School. These conditions provide the community and CNDI-LA with a mechanism to express concerns to the School and to receive a response from the School, and the conditions require the use of staff to enforce policies and conditions regarding routing, queuing, parking, safety, and security. As provided in the Applicant's proposed condition

no. 30 (the Alternate Condition), the School must demonstrate compliance with these large event conditions. (Ex. 163A.)

## **CONCLUSIONS OF LAW AND OPINIONS**

1. The Applicant requests special exception relief under 11-U DCMR § 205.1(a) of the Zoning Regulations to establish a public charter school and to colocate a public charter school with another school. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, subject to specific conditions. *See* 11-X DCMR § 901.2.
2. The Board's discretion in reviewing an application for a special exception under Subtitle U § 205.1(a) is limited to a determination of whether the applicant has complied with the requirements of Subtitle U § 205.2 and Subtitle X § 901.2. If the applicant meets its burden under the requirements, then the Board ordinarily must grant the application. *See, e.g., Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *see also Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18–19 (D.C. 1980). Since the Applicant has demonstrated that this application complies with the requirements of Subtitle U § 205.2 and Subtitle X § 901.2, the Board must grant the application.
3. Pursuant to Subtitle U § 205.1(a), to obtain special exception relief to allow certain non-residential uses in the R-16 zone, an applicant must demonstrate that it satisfies the five criteria under Subtitle U § 205.2. In this case, the Board finds that the application meets the following criteria under Subtitle U § 205.2:
  - (a) *The non-residential use is capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions; and*
  - (b) *There shall be adequate, appropriately located, and screened off-street parking sufficient to provide for the needs of the maximum number of occupants, employees, congregants, and visitors who can use the facility at one (1) time; provided:*
    - (1) *The number of parking spaces provided shall be not less than the number required by Subtitle C, Chapter 7 of this title and shall be located and designed so that they have the least objectionable effects on contiguous or nearby property because of noise, traffic, or other objectionable condition;*
    - (2) *Parking spaces and driveways providing access to them shall not be located in a required side setback, or on the lot between the principal building and a street right-of-way, nor in public space abutting the lot;*

- (3) If five (5) or more open parking spaces are provided, the parking spaces shall be screened from all contiguous residential property by a wood fence or a wall made of brick or stone at least twelve inches (12 in.) thick and sixty inches (60 in.) high, or by evergreen hedges or evergreen growing trees that are thickly planted and maintained and are at least sixty inches (60 in.) in height when planted; and*
- (4) Any lighting used to illuminate open parking spaces shall be so arranged that all direct rays of lighting are confined to the surface of the paved area devoted to parking; any lighting provided shall be the minimum necessary for reasonable visibility by drivers and for security purposes.*
4. In this case, the Board finds that the Applicant has demonstrated that the establishment of the proposed public charter school at the Property will not adversely affect the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions, in accordance with the requirements of Subtitle U § 205.2(a).
- a. Based on Findings of Fact Nos. \_\_\_\_\_, the Board finds that the School will not have adverse effects on neighboring properties because of the myriad mitigation measures, metrics, and growth checks embodied in the conditions of approval that the Applicant will implement that will prevent and/or mitigate the occurrence of objectionable traffic, noise, design, or other conditions. The Board is empowered to impose conditions on a special exception approval to ensure compliance with the intent of the Zoning Regulations, so the Board accordingly adopts 35 conditions of approval in this case. *See* Subtitle X § 901.4. The Board credits the testimony of OP, DDOT, and ANC 4C and that CNDI-LA agreed to the great majority of the conditions to find that the 35 conditions of approval, as stated herein, are comprehensive, enforceable, and appropriate to mitigate any adverse impacts on neighboring properties.
- b. With regard to the Alternate Condition, the Board finds that the condition will provide for adequate protections, checks, and community input to verify that the School is not adversely affecting the neighborhood and that it is complying with all applicable conditions before it expands from 310 students to 600 students. The Board credits the testimony of OP, DDOT, and ANC 4C in reaching this conclusion. The Board understands CNDI-LA's desire to require the School to receive BZA approval for an expansion of student count from 310 to 600, but the Board disagrees. Since the Board finds that the School's implementation of the Alternate Condition supports a conclusion that the School will not have an adverse effect on neighboring properties, the reason for the Alternate Condition is inapposite.<sup>4</sup> There is no requirement in the Zoning Regulations that a use approved by special exception must have a term or must be re-evaluated by the Board. In this case, the Board is empowered by the Zoning

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<sup>4</sup> The Applicant testified that the School cannot agree to a return to the BZA to increase the student count from 310 to 600 because it will be unable to obtain financing without the certainty of 600 students. (12/20 Tr. at 60-62; Ex. 160.) The Board has accepted financing challenges as a basis for relief in prior cases. *See, e.g.*, BZA Order No. 18787. However, even without a consideration of financing in this case, the Board may still evaluate of the efficacy of the Alternate Condition on its face and make a determination that implementation of the Alternate Condition supports a finding of no adverse impact from approval of the application.

Regulations to approve the proposed charter school for 600 students from the beginning, provided that the application satisfies the applicable special exception criteria. As long as the Alternate Condition will adequately contribute to mitigating potential adverse impacts from the student count increase at the School, then it, along with the other conditions of approval, is a legitimate basis to conclude that the application satisfies the applicable special exception criteria.

- c. With regard to traffic and parking, the Board finds that the School will not create adverse impacts on the neighborhood because of the mitigation measures – including the TDM plan and construction of infrastructure improvements – as well as because of the adoption of metrics and monitoring embodied in the PMP. The Board acknowledges the testimony of CNDI-LA and other opponents that the mitigation measures are insufficient and that the PMP will not adequately monitor the School's performance. However, the Board disagrees and is persuaded by the testimony of the Applicant's transportation expert and DDOT to determine that the mitigation measures, metrics, and monitoring to which the School will be subject will provide an adequate basis to limit any potentially adverse impacts on the neighborhood. Based on the expertise of both the Applicant's transportation expert, DDOT, and OP, the Board finds that the mitigation measures will have the intended effect of limiting School-related traffic congestion and that the PMP will employ an acceptable methodology and capture adequate data to sufficiently determine whether the School is achieving the established metrics.
  - d. The Board finds that the CTR included a sufficient scope to adequately assess the School's traffic and parking impacts. The Board acknowledges the claims of CNDI-LA and other opponents that the CTR did not adequately assess the School's impacts on the traffic and parking because it was too limited in scope, but the Board disagrees. Because the scope of the CTR was prepared in consultation with DDOT and in accordance with industry standards, the Board finds that the CTR was accurate in its assessment of the School's impacts. Based on the expertise of the Applicant's transportation expert and DDOT about the CTR's appropriate scope, the Board finds that the exclusion of some nearby intersections from the CTR does not affect the CTR's veracity. Accordingly, the Board finds that the data and reasoning in the CTR are sound and provide a solid basis for the Board to assess the School's traffic and parking impacts.
5. Based on Findings of Fact Nos. \_\_\_\_\_, the Board finds that there will be adequate, appropriately located, and screened off-street parking sufficient to provide for the needs of the maximum number of occupants, employees, congregants, and visitors who will park on the Property. The establishment of the School will not create a different parking or lighting situation than currently exists on the Property, so the School's parking will not have an unknown effect on neighboring properties. The provided number of parking spaces will be in excess of the expected demand and the required number in Subtitle C, Chapter 7. Evergreen trees that the School will install around the Property's perimeter will provide adequate screening. Even though some of the parking and driveways are in a required side setback and between the building and a street right-of-way, this requirement under Subtitle U § 205.2(b)(2)



was enacted after the BZA approval for Kingsbury that allowed it; thus, the existing situation is permitted to continue as legally nonconforming. Accordingly, the Board finds that the School's on-site parking will not create adverse impacts on neighboring properties in accordance with Subtitle U § 205.2(b).

6. Based on the Findings of Fact above, including OP's analysis, the Board finds that this application satisfies the general special exception criteria in Subtitle X § 901.2. By being consistent with the purposes, intent, and requirements of the R-16 zone and by including myriad mitigation, verification, and community involvement measures, this application is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.
  - a. The Board finds that granting this application is consistent with the purposes and intent of the R-16 zone. The Board agrees with CNDI-LA that special considerations must be given to the purposes and intent R-16 zone, but, by evaluating this application under the requirements of Subtitle U § 205 and by adopting 35 conditions of approval, that is what the Board did. Consistent with the purposes of the R-16 zone, as stated in Subtitle D § 900.1, approval of the application with conditions will not change the character of the low-density residential neighborhood because traffic, parking, design, lighting, and other adverse impacts to nearby low-density residential properties will not occur or will be appropriately mitigated. Further, consistent with the purposes of the R-16 zone, approval of the application with conditions will not result in the loss of any residential use (Property is currently non-residential) and will provide a social service within the framework of improved public review of and control over the external effects of the School (this BZA process). Consistent with the intent of the R-16 zone, as stated in Subtitle D § 900.2, approval of the application with conditions will not result in the conversion of any house into non-residential use, will not change the ratio of non-residential properties to residential properties, recognizes that the School is governed by improved public review (this BZA process) and must ameliorate its adverse impacts (the 35 conditions of approval), does not exacerbate the problem of the number of non-residential uses (a school already operates on the Property), and addresses the impacts of the non-residential public charter school use (the 35 conditions of approval).
  - b. The Board finds that granting this application is consistent with the requirements of the R-16 zone. The special exception criteria in Subtitle U § 205 are unique to the R-16 zone. Subtitle U § 205.1 states that uses permitted as a matter-of-right in Subtitle U § 202, which include a public charter school, "*shall be permitted... as a special exception*" in the R-16 zone "*subject to the provisions*" in Subtitle U § 205.2 and Subtitle X, Chapter 9. Accordingly, the criteria for special exception approval under Subtitle U § 205 necessarily include the Board's consideration of the intent, purposes, and requirements unique to the R-16 zone. Therefore, the Board finds that its evaluation and approval of this application under Subtitle U § 205.2 and Subtitle X § 901.2 considered the intent, purposes, and requirements in the R-16 zone.
7. The Board finds that it is legally impermissible to bind Kingsbury to any conditions in this Order. The Board may grant a special exception only for the requested use in the application.

*See* 11-X DCMR § 900.2. Accordingly, conditions included with the approval of a special exception application would apply to only the proposed use in such application. To subject a use and user not included in a special exception application to the conditions of approval would contravene the intent and requirements of the Zoning Regulations: each application is evaluated and granted based on the requested use and user in that application. In this case, the proposed public charter school is a different use than Kingsbury, which is a private school, and a private school was not proposed as part of this application. While Kingsbury, as the owner of the Property, consented to this application, it did not participate in the hearings, submit any testimony, and is not part of the proposed use. Further, Kingsbury is already regulated and bound by the conditions in BZA Order Nos. 16569 and 16569A, so the opportunity to impose, alter, or enforce conditions imposed on Kingsbury was during the proceedings pertaining to those cases or in separate enforcement actions. Therefore, the Board finds that it cannot subject Kingsbury to conditions that apply to the public charter school use and applicant, LAMB, in this Order.

8. The Board finds that CNDI-LA and the community were given adequate notice of this application. The Office of Zoning complied with all notice requirements in Subtitle Y § 402.1, and the Applicant complied with the notice requirements in Subtitle Y §§ 402.3 & 402.4. At a minimum, CNDI-LA and all property owners within 200 feet of the Property were notified of this application nearly three months before the public hearing.
9. Pursuant to D.C. Official Code § 6-623.04, the Board is required to give “great weight” to the recommendations of the Office of Planning. In this case, OP recommended approval of the application, including the Alternate Condition, and for the reasons stated in this Order, the Board concurs with that recommendation. The Board acknowledges CNDI-LA’s objection to OP’s support of the Alternate Condition and desire for OP to recommend additional conditions, but it is not persuaded. The Board is persuaded by OP’s reports and testimony in support of the application, the Alternate Condition, and the other conditions of approval because of OP’s thoughtful analysis and specialized knowledge OP has for assessing special exceptions for schools.
10. In accordance with D.C. Official Code § 1-309.10(d), the Board must give “great weight” to the written statements and recommendations of the affected ANC. In this case, ANC 4C recommended approval of the application with conditions, including the Alternate Condition, and, for the reason stated in this Order, the Board concurs with that recommendation. The Board accorded the statements and recommendations from ANC 4C the “great weight” to which they are entitled, and in so doing, fully credited the unique vantage point that ANC 4C holds with respect to the impact of the proposed application on the ANC’s constituents. The Board recognizes CNDI-LA’s contention that the ANC’s recommendation should not be given “great weight” because of CNDI-LA’s allegation of ANC bias, but the Board disagrees. The Board has given “great weight” to only the written recommendations of ANC 4C, not those of individual commissioners. The written support from SMD 4C02 Commissioner Maria Barry and other ANC 4C commissioners, on their own behalf, does not affect the veracity of the written recommendations from ANC 4C or discount the ANC’s value in this process. ANCs and individual commissioners almost always take public positions on BZA applications, as expected. Indeed, not remaining neutral by “[advising] the District government on matters of

public policy” is the ANC’s role. *See* D.C. Official Code § 1-207.38(c). As long as the written recommendations from the ANC satisfy the requirements under Subtitle Y § 406.2, the Board must give them great weight. The Board has limited jurisdiction that does not include evaluating the ANC’s rules and regulations or whether the ANC is in compliance with such rules and regulations. *See* D.C. Official Code § 6-641.07(g). Each ANC establishes its own governing bylaws and rules, and issues pertaining to those bylaws and rules are under the jurisdiction of the Office of Advisory Neighborhood Commissions and the Office of the Attorney General. *See, e.g.,* D.C. Official Code §§ 1-309.11(d) & 1-309.15(c). Therefore, the Board concludes that, since ANC 4C’s written recommendations to approve this application satisfy the requirements of Subtitle Y § 406.2,<sup>5</sup> the Board must give them “great weight.”

Based on the case record, the testimony at the public hearing, and the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under 11-U DCMR § 205.1(a) to establish a public charter school and to colocate a public charter school with another school. Accordingly, it is therefore **ORDERED** that this application is hereby **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

Transportation, Traffic, and Routing

1. The Applicant shall fund and construct the following improvements to the pedestrian network to encourage a reduction in automobile mode share and to mitigate travel delay impacts at nearby intersections:
  - a. A sidewalk along the southern side of Gallatin Street between Piney Branch Rd and 14<sup>th</sup> Street NW with new curb ramps and crosswalks, as required, as well as crosswalks specifically across Gallatin Street NW at both Piney Branch Road and Iowa Avenue to connect pedestrians to the existing sidewalk on the northern side;
  - b. New curb ramps on the northern and southern sides of Emerson Street at 15th Street NW and stripe crosswalks, subject to DDOT approval; and
  - c. Upgrades to all existing sub-standard curb ramps at the intersection of 14th Street and Farragut Street NW.
2. The School shall implement the following transportation demand management (TDM) plan:
  - a. Student TDM Elements
    - i. The School will encourage carpooling and publically recognize at Peace Ceremonies any parent who regularly drives 3 or more students to school.
    - ii. The School will offer DC One Cards to all students to encourage the use of public transportation.
    - iii. The School will require all drop-off and pick-up activities to be within areas specifically designated on the Property.
    - iv. The School will offer a parent listserv which will allow parents to find carpool matches.

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<sup>5</sup> The listing of all of the commissioners on ANC 4C’s letterhead for its written reports “contains” the number of commissioners that constitute a quorum, consistent with Subtitle Y § 406.2(d).

- v. The School will coordinate bike safety/education courses for students.
  - b. Faculty/Staff TDM Elements
    - i. The School will offer a transit benefit program to faculty and staff to encourage the use of public transportation.
    - ii. All faculty and staff who drive to school will be instructed to park on campus.
    - iii. The School will encourage carpooling and publically recognize any faculty or staff who regular drives 2 additional faculty or staff members to school.
    - iv. All faculty/staff will be complete training on TDM procedures.
  - c. School-Wide TDM Elements
    - i. The School will continue to work with the neighborhood through periodic public meetings to ensure any traffic concerns can be addressed in a timely manner.
    - ii. The School will assign a staff member to serve as Transportation Management Coordinator (TMC) who will be responsible for oversight of the TDM plan, adherence to driving and parking regulations, and encourage and facilitate carpooling.
    - iii. The School will implement policies for deliveries to the campus to minimize the impact of this traffic on the neighborhood.
    - iv. The School will install outdoor bicycle parking racks to promote additional bicycle activity on-campus.
    - v. The school will participate in the Safe Routes to School Program
  - d. The School shall post a sign on the Piney Branch Road gate(s) indicating that they shall be used for exit only.
3. Within the first month of each school year, LAMB shall distribute a policy manual, to include all regularly-scheduled PTO meetings, academic, and parent/student events, to all LAMB families that explains all relevant policies and procedures regarding its transportation management measures including, but not limited to, carpooling, parking, pick-up, drop-off, queuing, and driving routes.
- a. The policy manual also shall include “Safe Passage” information to ensure students’ safe arrival and departure. This policy manual will be made available to LAMB’s neighbors.
  - b. The policy manual shall advise families that parents driving to and from the school shall use the appropriate exit based on their commute needs.
  - c. LAMB shall make the policy manual available to any resident of ANC SMD 4C02 upon request.
4. LAMB shall support efforts of and will work with West Education Campus (“West EC”) to request additional Crossing Guards and Traffic Control Specialists to ensure the safety of children.
5. LAMB shall not recommend that Emerson Street be turned back into a two-way street.
6. The alley on the southeastern corner of the site shall be kept open for two-way traffic and emergency vehicles at all times.

7. As part of its annual survey of students and parents, LAMB shall collect data about the modes of transportation that LAMB students use to get to and from school. LAMB shall work with CNDI-LA in creating and establishing, to the extent possible, a comprehensive data questionnaire/survey to capture this information.
8. The number of parking spaces on the site shall be at least 107.
9. At the start of the 2018-2019 school term, continuing through subsequent years, LAMB will dedicate the services of traffic monitors, to be assigned at all queuing and entry/exit points during peak hours of drop-off and pick-up in order to assure compliance with the school's policy manual as it relates to transportation management measures including, but not limited to, carpooling, parking, pick-up, drop-off, queuing, and driving routes.
10. Starting in the first year of LAMB's operations at the building, LAMB shall implement the performance monitoring plan (PMP) as follows (also described in Exhibit 121):
  - a. The School shall submit a report to DDOT once per year. The report will include the following elements:
    - i. Student enrollment and number of faculty/staff;
    - ii. Total entering vehicle traffic counts for students, faculty, and staff at all site driveways for the busiest morning school drop-off hour. This count must be equal to or less than 295 vehicles, prorated based on the number of staff members and students enrolled at the time of reporting;
    - iii. Mode splits, broken down separately for students and faculty/staff, obtained by counters (not travel surveys);
    - iv. Vehicle occupancy counts;
    - v. Drop-off/pick-up area queue lengths and potential spill-back into public space using video counts (queues must not spill over into public space); and
    - vi. Documentation of any changes to transportation demand management (TDM) plan from previous year, including new or innovative policies being implemented not explicitly required in the TDM plan.
  - b. Data collection will be performed on a yearly basis. Data collection will occur on a typical school day during the Spring session when weather conditions are normal. A "typical" school day is defined as a Tuesday, Wednesday, or Thursday when regular school hours are in effect, during a week without holidays, and far enough into the school year that parents, students, and faculty/staff members are accustomed to school operations. Data collection shall include the following:
    - i. Obtaining student enrollment and faculty/staff numbers from LAMB at the time of reporting.

- ii. Manual counters or video counters will be employed at each of the four (4) site driveways between the hours of 7:00 and 9:30 AM on a typical school day in order to determine the total entering vehicles during the morning peak hour. These counters will also be used to determine whether or not the pick-up/drop-off queues extend into public space and the mode splits.
  - iii. Manual counters will be employed at the pick-up/drop-off area(s) and the parking lot to count the number of students in each vehicle and the number of employees carpooling. These counts will take place on the same day as the driveway counts.
  - iv. A survey of families and faculty/staff will be conducted and cross referenced against the field observations to help determine mode splits by students and faculty/staff.
- c. The School will be considered in compliance with the PMP if the vehicle trip target for the busiest morning school drop-off hour is met (i.e., less than or equal to 295 entering vehicles, factored based on the number of enrolled students and staff members) and if pick-up/drop-off queues are shown to stay within private property.
  - d. The submission of performance monitoring reports will continue until (1) a minimum of three years of reports have been submitted or LAMB increases its enrollment to a maximum of 600 students, whichever is later, **and** (2) the two latest consecutive years demonstrate that the school is in compliance with the PMP.

Good Neighbor Policy and Partnerships

- 11. LAMB shall work with West EC to ensure that the fundraising efforts of the schools' school-parent organizations (PTA/FTA/PTO) do not compete.
- 12. LAMB shall establish a non-voting community liaison committee, the LAMB/Community Committee (LCC), which will include representatives from CDNI-LA and West EC. The LCC will be comprised of nine (9) representatives: one (1) LAMB administrator, two (2) members of the LAMB PTO, one (1) LAMB parent residing in ANC 4C02 (if that is not possible, then the parent shall reside anywhere in ANC 4C), the ANC 4C02 SMD representative, and four (4) residents of ANC 4C02 on behalf of the community (equally split between CNDI-LA and West Education Campus representatives, provided that West EC representatives are not also CNDI-LA members). Meetings will occur in-person once per quarter at 5000 14<sup>th</sup> Street NW. One week prior to the school's start date, the LCC must have all members assigned and notified of the year's meeting schedule, which will be agreed upon each August, beginning in August 2018. After each meeting, a member of the LCC shall prepare and distribute to other LCC members a written summary report that includes a standing list of agenda items, attendees, old business, new business, and next meeting date.
- 13. The LCC meetings shall be used to identify any issues that require redress or mitigation. Issues may include, but are not limited to, those for parking, traffic, noise, environmental impact, and

lighting. LAMB shall work with the LCC to establish mitigation strategies and verification methods of compliance to address concerns arising from the LCC meetings.

14. LAMB will provide at least seven days advance notice to CNDI-LA, or as soon as possible for emergencies and unforeseen circumstances, before hosting a "large event." The notice shall include a description of the event, the date and start/end times, and the expected number of attendees. "Large event" shall be defined as one occurring, either during or after regular school hours, where parking is expected to overflow outside the property and into the neighborhood and/or the event will have any outdoor functions. "Large events" shall not include regularly-scheduled PTO meetings, academic events, or parent/student events.
15. LAMB representatives shall collaborate with representatives from West EC and CNDI-LA to coordinate schedules that will avoid, to the greatest extent possible, the simultaneous hosting of large events.
16. After a large event, LAMB agrees to acknowledge receipt of any specific concerns or issues raised by CNDI-LA within one week receipt of CNDI-LA's written concerns and to respond in writing within 30 days of receipt from CNDI-LA to such concerns and issues. Notice to extend any written response from LAMB shall not be unreasonably withheld by CNDI-LA, provided that LAMB makes such request at least 10-days prior to the expiration of the response 30-day period.
17. At any large event, LAMB shall engage the services of staff as needed to enforce parking, traffic, queuing, noise, traffic entry/exit conditions, and provide safety and security services. LAMB will use its best efforts to accommodate all parking for large events on the school property.

Lighting, Noise, and Design

18. LAMB shall continue to use the same parking lighting plan as the Kingsbury Center, making sure all illuminations are pointing downwards. Any changes to the lighting plan shall be discussed in the quarterly LCC meetings before implementation.
19. All signage on the building will comply with applicable District of Columbia laws and regulations. Any changes to the signage on the building or on the property shall be discussed in the quarterly LCC meetings before implementation.
20. LAMB shall not install any lighting on the field or other additional outdoor lighting, except for that required by applicable laws and regulations.
21. LAMB will install acoustic blankets on the HVAC systems facing Piney Branch Road on the existing building, on any addition to the building, or on any new equipment to be installed on the subject property, whether on the ground or elevated.
22. The gymnasium shall conform to zoning requirements and will be contained within the Property boundaries. Prior to the construction of the gymnasium, BZA review and approval as a modification of consequence is required. The BZA's review of the gymnasium shall be

limited to the impacts of only the gymnasium and shall not be an evaluation of the entire School.

23. The gate at the southeastern corner of the site shall be on the property line and shall swing inward.
24. LAMB shall plant evergreen trees around the perimeter (not otherwise obstructed by the school building) of any current or future playground area to act as a noise buffer.
25. LAMB shall plant evergreen trees around the perimeter of the property, except for the 14<sup>th</sup> Street side, and ensure that any trees lost are replaced on an equivalent diameter-inches basis.

School Operations and Population

26. LAMB's regular hours of operation shall not exceed 7:00 am to 6:00 pm, Monday to Friday.
27. LAMB's before-care program shall start at 7:15 am, and drop-offs shall continue through 7:45 am. LAMB's day for 1st through 5th graders shall start at 8:15 am. LAMB's preschool 3, 4, and kindergarten shall start at 8:30 am.
28. The maximum number of students at LAMB shall not exceed 600, and the maximum number of faculty and staff members at LAMB shall not exceed 110.
29. During the interim period when both LAMB and Kingsbury are in the building, the maximum number of LAMB students shall not exceed 310, and the maximum number of LAMB faculty and staff shall not exceed 36.
30. After Kingsbury departs the property, LAMB shall provide CNDI-LA and ANC 4C with the certificate of occupancy application and all accompanying documentation at least 90 days before LAMB applies for a certificate of occupancy to expand into the remainder of the building and increase the student and staff count. LAMB shall demonstrate to DDOT and report to the Zoning Administrator that it is in compliance with the performance monitoring plan (PMP) and demonstrate to the Zoning Administrator that it is in compliance with all other relevant conditions of approval. If LAMB is not in compliance with the PMP, and all other conditions are not met, LAMB shall not be granted a certificate of occupancy for an increase in student and staff count unless given approval by the BZA.

Construction Management for Renovations and Construction of Gymnasium

31. Exterior construction shall be limited to the hours of 7:00 AM – 5:00 PM weekdays; and 8:00 AM – 5:00 PM Saturdays. Noise associated with construction activities will be minimized as much as possible during these hours. In the event that the Applicant requires additional hours for exterior construction, they will appear before ANC 4C and follow all District rules and procedures for after-hours construction.
32. The Applicant shall instruct all construction personnel that they shall not be permitted to park personal or construction vehicles on neighborhood streets. Staging or queuing of such vehicles will also not be permitted on neighborhood streets before the beginning of construction hours except as allowed by permit from DDOT and/or DCRA. There will be no overnight staging



of such vehicles or material left on neighborhood streets or in the public space at any time during construction except as allowed by permit from DDOT.

33. All truck traffic will use an approved circulation plan along main arterials, Military Road/Missouri Avenue onto 14th Street, to minimize the impact on the adjacent neighborhood streets, provided that such plan is approved by DDOT.
34. At the completion of each work day, the construction site will be cleared of litter and debris, and all construction materials and machinery will be left in an organized manner. Sidewalks and streets around the perimeter of the site shall be kept clear and clean of concrete, dirt, mud, rocks, sand, or other aggregates throughout the period of construction.
35. For any proposed use of public space for construction activity, the Applicant shall appear before ANC prior to filing an application for a public space permit.

**VOTE:**       **4-0-1** (Frederick L. Hill, Carlton Hart, Lesylleé M. White, and Anthony Hood to APPROVE; one Board seat vacant)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:** \_\_\_\_\_  
**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** \_\_\_\_\_

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.